S.B. Civil Writ Petition No.7099/2007
Santosh Devi & Ors.
vs
AdJ (Fast Track) No.2, Udaipur & Ors.

Date of order : 5.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.Madan Lal Purohit,for the petitioners.

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None present for the respondents after service, therefore, heard learned counsel for the petitioners as notices were issued for final disposal of the writ petition.

It appears that on 2nd May, 2007, an application under Order 7 Rule 11 CPC was heard and decided by the trial court and on the same day, the defendants' right to file written statement was closed.

Learned counsel for the petitioners submitted that the petitioners submitted written statement on next date and also submitted an application that petitioners were under impression that the case was fixed for the written statement in usual course after the dismissal of the application filed under Order 7 Rule 11 CPC. The petitioners' application for taking on record the written statement was dismissed by the trial court vide impugned order dated 24th Sept., 2007. The petitioners submitted that a lenient view may be taken and the petitioners' written statement

which has already been submitted be taken on record.

Since on 2nd May, 2007 application filed under Order 7 Rule 11 CPC was dismissed and, therefore, there might have been reason for defendants to believe that case was fixed for filing written statement, therefore, in this situation, the court should have taken a lenient view and could have taken on record the written statement filed by the defendant on record.

In view of the above reasons, the writ petition is allowed, the order of the trial court dated 24th Sept., 2007 is set aside and the written statement of the petitioners be treated to be on record. The petitioners-defendants shall pay the cost of Rs.1,000/- to the plaintiffs and in case, the cost is not accepted then the same be deposited in the trial court by the defendants. Copy of this order be sent to the trial court.

(PRAKASH TATIA), J.

c.p.goyal/-